

CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE

Focus Questions for Hearing on Use of Informant Testimony.

On Wednesday, September 20, 2006, the California Commission on the Fair Administration of Justice will convene a public hearing on issues surrounding the use of informant testimony in California criminal trials. The hearing will take place at the County Board Chambers for San Mateo County, Hall of Justice, 400 County Center, Redwood City, California.

The Commission has reviewed the Report of the 1989-90 Los Angeles County Grand Jury and its recommendations, as well as the California legislation enacted in the wake of that investigation, California Penal Code Sections 1127a, 1191.25 and 4001.1. These provisions regulate the testimony of “in custody informants,” defined to mean a person, other than a codefendant, percipient witness, accomplice or coconspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institution. Penal Code Section 1127a (a). The Commission would like to focus its inquiry on the broader issues surrounding all informant testimony in which any consideration is promised to or received by the testifying informant. As defined by Penal Code Section 1127a(c), “consideration” means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, benefit, immunity, financial assistance, reward, or amelioration of current or future conditions of incarceration in return for, to in connection with, the informant’s testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness.

Rather than issue tentative recommendations at this time, the Commission would like to focus the hearing on particular questions.

1. Many District Attorney Offices have implemented the 1989-90 Grand Jury recommendations by requiring supervisory approval, corroboration, past history, and full disclosure in any case where a prosecutor proposes to use an in-custody informant as a witness. Are these “best practices” being followed on a state-wide basis? Should these “best practices” be implemented for all informant testimony in which any consideration is promised to or received by the testifying informant?

2. The California Penal Code currently requires that (1) a written statement describing the consideration received by an in custody informant be filed with the court and provided to the defendant or his counsel when the witness is called, (2) notification be given to the victims of any crimes in which the prosecutor proposes to offer a modification or reduction of sentence to an in custody informant, and (3) a cautionary instruction be given to the jury in any case in which an in custody informant testifies as a witness. Should these safeguards be extended to all informant testimony for which any consideration is promised to or received by the testifying informant?
3. There may be prisoners still serving sentences in California prisons who were convicted based upon the testimony of in custody informants prior to the implementation of current best practices and prior to the enactment of current Penal Code safeguards. Should a remedy be available to facilitate the reopening of such cases, similar to the Innocence Commission recently established by the State of North Carolina?
4. Should police and prosecutor interviews of informant witnesses be electronically recorded?
5. Should corroboration be legally required for the testimony of in custody informants? For the testimony of all informants for which any consideration is promised to or received by the testifying informant? If so, what degree of corroboration should be required? Should it exceed the “slight” corroboration currently required for accomplice witnesses? [*Cf.* California Penal Code Section 1111, CALCRIM No. 334, 335].
6. Should additional training be required to acquaint investigators, prosecutors, judges and defense lawyers with the risks and dangers presented by the use of informant testimony?